EDITOR'S NOTE

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FILED

(2) 93 1776 MAY 9 1994

OFFICE OF THE CLERK

No. _____

In the

Supreme Court of the United States

October Term, 1994

GORDON L. HALL, et al.,
Petitioners,

v.

VAL JOHN GREEN,
Respondent.

and

UNITED STATES OF AMERICA,
Respondent.

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Phillip D. Chadsey*
*Counsel of Record**
STOEL RIVES BOLEY JONES & GREY
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Portland, OR 97204-1268
Telephone: (503) 224-3380
Counsel for Petitioners

May 6, 1994

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SUPPLEMENTAL APPENDIX

LINE OF DUTY INVESTIGATION

Supp. A-1

DEPARTMENT OF THE ARMY
HEADQUARTERS, 3D BATTALION, 12TH SPECIAL FORCES GROUP (AIRBORNE)
UNITED STATES ARMY RESERVE CENTER
HAMILTON ARMY AIRFIELD, CALIFORNIA 94949-5099

REPLY TO ATTENTION OF

AFKE-AC-IL-MSFT 16 September 1989

MEMORANDUM FOR Captain Michael T. Wilson, 448-54-7011, Co B 3d Bn 12th SFG(Abn)
PO Box 88668, Steilacoom, WA 98388-0668

SUBJECT: Appointment of Investigating Officer

1. You are hereby appointed an investigating officer in accordance with paragraph 38-3, Army Regulation 600-8-1. You are to conduct a formal Line of Duty investigation concerning the death of Sergeant First Class Michael David Coffman, 541-58-0700, United States Army Reserve, assigned to Co A 3d Bn 12th SFG(Abn). Sergeant First Class Coffman was killed in an automobile accident on 8 July 1989 while on Inactive Duty Training.

2. Paragraphs 39-2c(6) and 39-2c(7), AR 600-8-1, require a formal investigation when death of USAR personnel occurs while participating in authorized training/duty or while traveling to or from authorized training/duty. Chapter 40, AR 600-8-1 will be your guide in this matter.

3. Your findings and recommendations will be submitted in four (4) copies with appropriate enclosures on DD Fm 261(Report of Investigation--Line of Duty and Misconduct Status) to this headquarters, Attn: AFKE-AC-IL-MSFT, Not Later Than 16 October 1989.

FOR THE COMMANDER:

George P Morris Jr

GEORGE P MORRIS JR
Supervisory Staff
Administrator

2 Encl
1. DA Fm 2173
2. Mssg-Subj:
Casualty Report

CF:
Cdr, Co A 3/12th SFG, Portland, OR (w/o encl)
Cdr, 12th SFG(Abn), Arlington Heights, IL (w/o encl)

REPORT INVESTIGATION
LINE OF DUTY AND MISCONDUCT STATUS

20 October 1989

☐ INJURY ☐ DISEASE ☒ DEATH

TO: HQ, 3d Bn 12th SFG(A)
Bldg 442, USARC
Hamilton AAF, CA 94949-5099

NAME	SERVICE NUMBER	GRADE
COFFMAN, MICHAEL D.	541-58-0700	E-7

ORGANIZATION AND STATION OF INDIVIDUAL
OD A2, Co A 3d Bn 12th SFG(A) Portland ANG Base, Portland OR

OTHER MILITARY PERSONNEL INVOLVED IN THE SAME INCIDENT	SERVICE NUMBER	GRADE	LOD INVESTIGATION MADE
GREEN, VAL J.	544-74-8404	E-5	X

STATUS: 7 Jul 89 1900
DUTY: 9 Jul 89 1700

BASIS FOR FINDINGS

(1) CIRCUMSTANCES	(2) HOUR	(3) DATE	(4) PLACE
	0845	8 July 1989	Portland, OR

(5) DESCRIPTION OF INCIDENT: AUTOMOBILE ACCIDENT
(6) NATURE AND EXTENT OF INJURY OR MEDICAL DIAGNOSIS: Dead on Arrival

(7a) ☐ WAS ☐ WAS NOT PERFORMING DUTY
(7b) ☐ WITH ☐ WITHOUT AUTHORITY
(8) INTENTIONAL MISCONDUCT OR NEGLECT: ☐ WAS ☐ WAS NOT THE PROXIMATE CAUSE
(9) ☐ WAS ☐ WAS NOT HOSTILITY FOUND

REMARKS

See Attached 9g

FINDINGS (By the authority of the Secretary of the Army)
☐ IN LINE OF DUTY
☐ NOT IN LINE OF DUTY - NOT DUE TO OWN MISCONDUCT
☐ NOT IN LINE OF DUTY - DUE TO OWN MISCONDUCT

ORGANIZATION AND STATION OF INVESTIGATING OFFICER: Co B 3d Bn 12th SFG(A), Ft Lewis, WA
SIGNATURE AND TYPED NAME OF INVESTIGATING OFFICER: MICHAEL T. WILSON
GRADE: O-3 BRANCH: USAR SERVICE NO.: [redacted]

ACTION BY APPOINTING AUTHORITY
ORGANIZATION: 3d Bn 12th SFG(A) DATE: 27 Oct 89
☒ APPROVES ☐ DISAPPROVES
SIGNATURE AND TYPED NAME: JAMES A. LILJEFELT
GRADE: LTC/O5 BRANCH: IN-USAR SERVICE NO.: [redacted]

ACTION BY REVIEWING AUTHORITY
ORGANIZATION: DATE:
☐ APPROVES ☐ DISAPPROVES
SIGNATURE AND TYPED NAME: "SAME AS FINAL APPROVING AUTHORITY"
GRADE: BRANCH: SERVICE NO.:

FOR ACTION OF OFFICE DESIGNATED BY TITLE

AFZH-AGI
HQ, I CORPS AND FORT LEWIS, FORT LEWIS WA 98433-5000
REVIEWED FOR COMPLETENESS. No Determination made.
BY AUTHORITY OF THE SECRETARY OF THE ARMY:

D. P. SCHNEIDER
COL, AG
Adjutant General

DEC 6 1989

DD FORM 261

SUPERSEDED EDITION OF 1 AUG 57 IS OBSOLETE

DD Form 261 pertaining to SFC Coffman, Michael D., 541-58-0700, 20 Oct 89; Item 9g:

SFC Coffman departed the U.S. Army Reserve Center at Portland Air National Guard Base at approximately 0745 on 8 July 1989. His purpose for leaving the center was to pick up training materials at SFC Val Green's residence. SFC Coffman did this with the knowledge and consent of his Detachment Operations Sergeant, MSG Steven M. Lucas. At approximately 0845 SFC Coffman was involved in a fatal automobile accident. It appears that based on the police accident report and statements from witnesses at the accident scene, SFC Coffman did not observe that the traffic signal was red and that he drove his vehicle through the intersection against the light where he was struck broad-side by a heavy delivery truck. My conversations with the Portland Police Department Investigation Officer, the police accident reports, and reports of witnesses at the scene indicate that SFC Coffman was not exceeding posted speed limits and was not driving in a reckless manner. I have spoken with SFC Coffman's Commanding Officer, his Detachment Operations Sergeant, and his civilian work supervisor. I have tried to reconstruct the 24-hour period preceeding and leading up to the accident. I have examined police and hospital reports and spoken with police investigators. My observations are based on the above. SFC Coffman was an intelligent, extremely conscientious individual who took his civilian and military occupations seriously. It was not his nature to do things in a wreckless or careless manner. Within the preceeding 24 hours of the accident SFC Coffman had worked a full day at his civilian employment after which he had reserve duty which lasted almost from the time he left his civilian job until approximately 0330 the next morning. He had received approximately 3 hours sleep during that 24 hour period. In addition to this he told his Operations Seargent that he was not feeling well, and thought he might be coming down with the flu. Based on my findings, SFC Coffman appeared to be suffering from fatigue from having performed military duties the whole night before and from a possible physical illness. SFC Coffman was most likely not the usual rested individual who drove through that intersection at approximately 0845 on 8 July 1989. After reviewing all of the attached evidence, my conclusion is that fatigue was a contributing, if not significant factor in this unfortunate accident which cost SFC Coffman his life 22 NOV 89

The following Exhibits are attached:

A — IO Appointment Memorandum

B — DA Form 2173 Statement of Medical Examination and Duty Status

C — Statement, SGT Val Green, [redacted] Portland, OR Dated 18 Oct 89

D — Statement, MSG Steven M. Lucas, [redacted] Portland, OR Dated 18 Oct 89

E — Statement, IO, dated 19 Oct 89

F — Statement, IO, Dated 19 Oct 89

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is Office of The Deputy Chief of Staff for Personnel.

LOCATION	DATE	TIME	FILE NUMBER
Portland, oregon"	20 OCT 89	0900 HRS	

LAST NAME, FIRST NAME, MIDDLE NAME	SOCIAL SECURITY NUMBER	GRADE/STATUS
Lucas, Steven Martin	567-64-8822	E-8/USAR

ORGANIZATION OR ADDRESS

ODA-2, CO A, 3rd SF BN, 12th SFG(ABN), Box 28 Portland ANG Base, Portland, OR. 97218-2797

I, Steven M. Lucas, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

THE DRILL WEEKEND STARTED AT 1900 HRS ON 7 JUL 89. THERE WAS AN AIRBORNE OPERATION THAT NIGHT. SFC COFFMAN ASKED TO BE EXCUSED FROM THE JUMP DUE TO STOMACH DISTRESS. HE WAS GRANTED PERMISSION TO NOT JUMP, AND INSTEAD, BE A PART OF THE DROP ZONE PARTY. HIS DUTY WAS TO DRIVE A TWO AND A HALF TON TRUCK TO AND FROM THE DROP ZONE. AFTER THE JUMP WE ARRIVED BACK AT THE RESERVE CENTER AT APPROXIMATELY 0330 HRS ON 8 JUL 89. WE STAYED IN THE BARRACKS AND SLEPT THE REMAINDER OF THE MORNING UNTIL WAKE-UP AT 0715 HRS.

AT APPROXIMATELY 0745 HRS THAT MORNING, SFC COFFMAN INDICATED THAT HE WAS GOING TO TAKE SGT GREEN TO PICK UP MATERIALS THAT HE (GREEN) HAD INADVERTENTLY LEFT AT HOME, THAT WERE NEEDED FOR CLASSES, TO BE GIVEN LATER THAT MORNING.

SFC COFFMAN HAD APPROVAL TO LEAVE THE RESERVE CENTER AT THIS TIME AS WE HAD NO OFFICIAL DUTIES UNTIL THE COMPANY FORMATION AT 0900 HRS. SFC COFFMAN WAS AWARE OF THE FORMATION AND THE TIME, AND INDICATED THAT THEY WOULD BE BACK IN TIME FOR THE FORMATION.

SHORTLY AFTER THE FORMATION HAD STARTED WORD WAS PASSED DOWN ABOUT THE ACCIDENT, WHICH EXPLAINED WHY THE SGT'S WERE NOT PRESENT.

END OF STATEMENT

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF 2 PAGES
D		

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF ___, TAKEN AT ___, DATED ___, CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE ___ OF ___ PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

DA, FORM 2823 SUPERSEDES DA FORM 2823, 1 JAN 72, WHICH WILL BE USED.

DD Form 261 pertaining to SFC Coffman, Michael D., 341-58-0700, 20 Oct 89;
Item 9g (continued):

C — Accident Report

H — Hospital Medical Report and Emergency Room Admittance Record

I — Medical Examiner Examination of Remains Report

J — Medical Examiner Blood Alcohol Test Report

K — DD Form 2063 Record of Preparation and Disposition of Remains.

~~L — Copy of Letters of Sympathy to Next of Kin~~

STATEMENT OF MEDICAL EXAMINATION AND DUTY STATUS

For use of this form, see AR 600-33; the proponent agency is The Adjutant General's Office.

THRU (Include ZIP Code)	TO (Include ZIP Code)	FROM (Include ZIP Code)
Cdr, 3/12th SFG (Abn) Portland, OR 97218-2797 Cdr, 3/12th SFG (Abn) Hamilton AAF, CA 94949-5099	HQ, I Corps & Ft Lewis ATTN: AFZH-AGI-I Ft Lewis, WA 98433-5000	COMMANDER MADIGAN ARMY MEDICAL CENTER TACOMA, WA 98431-5303

1. NAME OF INDIVIDUAL EXAMINED (Last, First, and Middle Initial)	2. SSN	3. GRADE
COFFMAN, MICHAEL DAVID	541-58-0700	E7/SFC

4. ORGANIZATION AND STATION	5. ACCIDENT INFORMATION	
	a. DATE	b. PLACE (City and State)
CO A 3/12th SFG (A) PORTLAND, OR 97218-2797	8 Jul 89	Portland, Or

SECTION I - TO BE COMPLETED BY ATTENDING PHYSICIAN OR HOSPITAL PATIENT ADMINISTRATOR

6. INDIVIDUAL WAS ☐ OUT PATIENT ☐ ADMITTED ☒ DEAD ON ARRIVAL	7. NAME OF HOSPITAL OR TREATMENT FACILITY ☐ CIVILIAN ☐ MILITARY
	Emanuel Hospital

8. HOUR AND DATE ADMITTED	9. HOUR AND DATE EXAMINED
	0808 hrs, 8 Jul 89

10. NATURE AND EXTENT OF ☒ INJURY ☐ DISEASE ☒ RESULTING IN DEATH (Examiner)

Chest & Head injuries

11. MEDICAL OPINION: a. INDIVIDUAL ☐ WAS ☒ WAS NOT UNDER THE INFLUENCE OF ☐ ALCOHOL ☐ DRUGS (Specify)

b. INDIVIDUAL ☒ WAS ☐ WAS NOT MENTALLY SOUND (Unless Psychiatric examination is attached).

c. INJURY ☐ IS ☒ IS NOT LIKELY TO RESULT IN A CLAIM AGAINST THE GOVERNMENT FOR FUTURE MEDICAL CARE.

d. INJURY ☒ WAS ☐ WAS NOT INCURRED IN LINE OF DUTY. BASIS FOR OPINION:

Para a unknown

12. THE FOLLOWING DISABILITY MAY RESULT	13. BLOOD ALCOHOL TEST MADE	14. NO. OF MG ALCOHOL PER 100 ML BLOOD
☐ TEMPORARY ☐ PERMANENT PARTIAL ☐ PERMANENT TOTAL	☐ YES ☐ NO	

15. DETAILS OF ACCIDENT OR HISTORY OF DISEASE (Date, onset, place)

SFC Coffman went thru a red light and was struck on driver's side by a Salvation Army delivery truck. Medical aid was summoned and was taken to Emanuel Hospital, Portland Or.

16. DATE	17. TYPED OR PRINTED NAME OF ATTENDING PHYSICIAN OR PATIENT ADMINISTRATOR	18. SIGNATURE
7 Aug 89	PAUL D. WUERDEMAN, CPT MS	

SECTION II - TO BE COMPLETED BY UNIT COMMANDER OR UNIT ADVISER

19. DUTY STATUS	20. HOUR AND DATE OF ABSENCE	
☒ PRESENT FOR DUTY ☐ ABSENT WITHOUT AUTHORITY ☐ ABSENT WITH AUTHORITY: ☐ ON PASS ☐ ON LEAVE	a. FROM	b. TO

21. ABSENCE WITHOUT AUTHORITY MATERIALLY INTERFERED WITH THE PERFORMANCE OF MILITARY DUTY (Explain in item 27 if duty involved death of man, and state if one of the men mentioned was questioned)

☐ YES ☐ NO

22. INDIVIDUAL WAS ON	23. HOUR AND DATE TRAINING	
☐ ACTIVE DUTY ☐ ACTIVE DUTY FOR TRAINING ☒ INACTIVE DUTY TRAINING	a. BEGAN	b. ENDED
	1900 7 July 1989	1600 9 July 1989

24. RESERVIST DIED OF INJURIES RECEIVED PROCEEDING ☐ DIRECTLY TO TRAINING ☐ DIRECTLY FROM TRAINING

25. MODE OF TRANSPORTATION	26. HOUR BEGINNING TRAVEL	27. DISTANCE INVOLVED	28. NORMAL TIME FOR TRAVEL
NA	NA	NA	NA

29. DUTY STATUS AT TIME OF DEATH IF DIFFERENT FROM TIME OF INJURY OR CONTRACTION OF DISEASE

☐ PRESENT FOR DUTY ☐ ABSENT WITH AUTHORITY ☐ ABSENT WITHOUT AUTHORITY

30. DETAILS OF ACCIDENT: REMARKS (If additional space is needed, continue on reverse, indicating item number in question)

SFC Coffman was driving his POV with SGT Val J. Green, [illegible], as a passenger. They were either enroute to or retruning from SGT Green's residence where they were picking up training aids to utilize during scheduled SQT training. Some specifics are difficult to determine as SFC Coffman died without regaining consciousness and SGT Green, who was severely injured, has no recollection of the accident or the events leading up to it. Witnesses state that SFC Coffman failed to see a red light at a controlled intersection and was struck broadside by a civilian heavy truck.

31. FORMAL LINE OF DUTY INVESTIGATION REQUIRED	32. INJURY IS CONSIDERED TO HAVE BEEN INCURRED IN LINE OF DUTY (If considered on merits)
☒ YES ☐ NO	☐ YES ☐ NO

33. DATE	34. TYPED NAME AND GRADE OF UNIT COMMANDER OR UNIT ADVISER	35. SIGNATURE
890819	PAUL L. HENDERSON, MAJ, SF, USAR	

DA FORM 2173

REPLACES DA FORM 2173, 1 JUNE 56, WHICH IS OBSOL[illegible]